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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

HIRAM GLENN, JR.,

Case No.: 2:22-cv-00712- RFB-BNW

Plaintiff,

vs.

MISSION SUPPORT AND TEST SERVICES
LLC (MSTS)/ Upper Management and
Laborer Relations Representative (Taylor
Andrews), MSTS ADA Coordinator (Angelica
Wolf).

**DEFENDANT TAYLOR ANDREWS
RULE 12(b)(5) AND RULE 12(b)(6)
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

Defendants.

Defendant Taylor Andrews (“Defendant Andrews”), an individually named Defendant, by and through his counsel, the law firm of Jackson Lewis P.C., moves to dismiss Plaintiff’s Complaint (ECF No. 2) pursuant to Rule 12(b)(5) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. This Motion is based on the pleadings and papers on file in this case, the following memorandum of points and authorities, the Declaration of Taylor Andrews, and any oral argument the Court deems proper.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case involves alleged employment discrimination in which Plaintiff has named an employer, Mission Support and Test Services, LLC, and two employees as individual defendants,

1 including Defendant Andrews. However, Plaintiff failed to serve Defendant Andrews pursuant to
 2 Rule 4 of the Federal Rules of Civil Procedure.

3 Moreover, even if Defendant Andrews was properly served (he was not), Plaintiff fails to
 4 state a claim for which relief may be granted against Defendant Andrews because Defendant
 5 Andrews was not Plaintiff's employer.

6 **II. FACTUAL BACKGROUND**

7 On May 4, 2022, Plaintiff filed a Complaint (ECF No. 2) alleging the following the claims:
 8 (1) Disability Discrimination under the ADA and NRS 613, (2) Retaliation under Title VII and
 9 NRS 613, (3) Disability Discrimination under the ADA, and (4) Age discrimination under the
 10 ADEA. Plaintiff's Complaint named three defendants: (1) Mission Support and Test Services, LLC,
 11 (2) Taylor Andrews, an individual, and (3) Angelica Wolf, an individual.

12 On or about May 8, 2023, the Laborer's International Union of North America, Local 872
 13 ("Local 872") received certified mail that included the first page of Plaintiff's Complaint and a
 14 Summons addressed to Mission Support and Test Services, LLC. **Exhibit 1**. Local 872 is Defendant
 15 Andrew's current employer. Declaration of Taylor Andrews attached as **Exhibit 2** at ¶3. Counsel
 16 for Local 872 contacted Plaintiff via letter to inform him that Local 872 was not authorized to accept
 17 service of process for either MSTS or Defendant Andrews. **Exhibit 1**.

18 On or about May 16, 2023, a deputy constable from the Las Vegas Township Constable's
 19 Office attempted to serve on Defendant Andrews a copy of Plaintiff's Complaint and a summons
 20 issued to Mission Support and Test Services, LLC. **Exhibit 3**. The documents were provisionally
 21 received by William Kephart, Local 872's general counsel. *Id.* Again, Local 872's counsel stated it
 22 was not authorized to accept service of these documents for either MSTS or Defendant Andrews.
 23 *Id.* Defendant Andrews was not present at Local 872's union hall when the constable delivered the
 24 documents. **Exhibit 2** at ¶ 4. At no point did Defendant Andrews authorize Local 872 to accept
 25 service on his behalf. *Id.* at ¶ 5. To date, Defendant Andrews has not been served with a copy of
 26 the Complaint or an appropriately addressed summons. *Id.* at ¶ 7.

27 On July 3, 2023, Plaintiff filed an affidavit of service, stating the constable served a copy
 28 of the Complaint and Summons on William Kephart at 2345 Red Rock Street, Las Vegas, NV,

1 89146. ECF No. 20. This affidavit notes Defendant Andrews was not at the union hall when the
 2 constable attempted service. *Id.* at 3.

3 III. LEGAL ARGUMENT

4 A. Plaintiff Failed to Serve Defendant Andrews in Compliance with Rule 4.

5 Fed. R. Civ. P. 12(b)(5) permits a defendant to move for dismissal due to insufficient service
 6 of process. When a defendant challenges service, the plaintiff bears the burden of establishing the
 7 validity of service. *See Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). “Defendants must be
 8 served in accordance with Rule 4[] of the Federal Rules of Civil Procedure, or there is no personal
 9 jurisdiction.” *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982); *Crowley v. Bannister*,
 10 734 F.3d 967, 974-75 (9th Cir. 2013). The summons must be served with a copy of the complaint
 11 within the time allowed by Rule 4(m). Fed. R. Civ. P. 4(c). Under Rule 4(m), if a defendant is not
 12 served within 90 days after the complaint is filed, the court, on motion or on its own, must dismiss
 13 the action without prejudice as to that defendant or “order that service must be made within a
 14 specified time.” Fed. R. Civ. P. 4(m); *Abrams Ins.*, 2021 U.S. Dist. LEXIS 227452, at *6-7.

15 A plaintiff may serve a copy of the summons and complaint by either: (1) delivering a copy
 16 to the individual personally, (2) leaving a copy at the individual’s dwelling, with someone of
 17 suitable age who resides there, or (3) delivering a copy to the defendant’s authorized agent. Fed. R.
 18 Civ. P. 4(e)(2)(A)-(C).

19 Here, Plaintiff did not serve Defendant Andrews in accordance with Fed. R. Civ. P. 4(e).
 20 Plaintiff did not deliver a copy of the Complaint and Summons to Defendant Andrews personally.
 21 Defendant Andrews was not present at the union hall when the constable attempted to serve the
 22 Complaint and Summons. ECF No. 20 at 3; **Exhibit 2** at ¶ 4. Further, Defendant Andrews has not
 23 personally received a copy of the Complaint and Summons. *Id.* at ¶ 7. Defendant Andrews is
 24 unaware of any attempt to serve him at his dwelling. *Id.* at ¶ 8. Furthermore, William Kephart is
 25 not Defendant Andrews’ authorized agent nor has Defendant Andrews authorized Local 872 to
 26 accept service on his behalf. *Id.* at ¶¶ 5 and 6.

27 Even assuming Mr. Kephart was authorized to accept service, which he was not, service
 28 was still improper as the Summons was not directed towards Defendant Andrews. A summons

1 must, among other things, name the court and the parties and *be directed to the defendant*. Fed. R.
 2 Civ. P. 4(a)(1)(A)-(B) and 4(c). Here, the Summons delivered to Local 872 was directed to
 3 Defendant MSTS, not Defendant Andrews. Thus, Plaintiff's attempt at service fails because the
 4 Summons was incorrect.

5 Accordingly, this Court should dismiss the Complaint against Defendant Andrews for
 6 failing to effectuate service.

7 **B. Defendant Andrews was not Plaintiff's Employer.**

8 This Court should further dismiss Plaintiff's Complaint because Defendant Andrews was
 9 not Plaintiff's employer and thus cannot be liable for alleged violations of employment law.
 10 Plaintiff's Complaint alleges the following claims: (1) disability discrimination under the ADA and
 11 NRS 613, (2) retaliation under Title VII and NRS 613, (3) disability discrimination under the ADA,
 12 and (4) age discrimination under the ADEA. (ECF No. 2).

13 It is well-established that no action can be maintained against individual employees under
 14 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*, the Age
 15 Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, and the Americans With Disabilities
 16 Act, 42 U.S.C. §12101 *et seq.* *See Miller v. Maxwell's International, Inc.*, 991 F.2d 583 (9th Cir.
 17 1993) *followed in Walsh v. Nev. Dep't of Human Res.*, 471 F.3d 1033 (9th Cir. 2006); *Padway v.*
 18 *Palches*, 665 F.2d 965, 968 (9th Cir. 1982); *Seib v. Elko Motor Inn*, 648 F. Supp. 272, 274 (D. Nev.
 19 1986); *Pree v. Stone & Webster Eng'g Corp.*, 607 F. Supp. 945, 950 (D. Nev. 1985). Similarly, the
 20 Courts have held no action can be maintained against individual employees under the ADEA and
 21 ADA. *Johnston v. City of Red Bluff*, 723 Fed. Appx. 558, 559 (9th Cir. 2018) (ADEA does not
 22 impose individual liability on employees); *Walsh v. Nev. Dep't of Human Res.*, 471 F.3d 1033,
 23 1038 (9th Cir. 2006) (suits against individuals under Title I of the ADA are barred).

24 The plaintiff in *Miller* filed a lawsuit alleging discrimination and harassment and named
 25 several supervisors (as well as the CEO and owner of the business where she worked) in their
 26 individual capacities as defendants. *Miller*, 991 F.2d 583 at 584. The court affirmed dismissal of
 27 Miller's claims against all the individually named defendants holding there was no personal liability
 28 under Title VII. In making its decision, the court examined the language of Title VII and

1 determined that Congress only intended to assess civil liability against employers, not individual
 2 employees. *Id.* at 587. The court reasoned that "if Congress had envisioned individual liability
 3 under Title VII for compensatory or punitive damages, it would have included *individuals* in this
 4 litany of limitations and would have discontinued the exemption for small employers." *Id.* at 588.
 5 Harassment claims are also analyzed as a form of discrimination that is actionable under Title VII.
 6 *See Meritor Savings Bank v. Vinson*, 477 U.S. 57, 63-69 (1986).

7 Nowhere in his Complaint does Plaintiff allege that he was employed by Defendant
 8 Andrews. He merely asserts that Defendant Andrews worked as an employee of Mission Support
 9 and Test Services, LLC, as a "Labor Relations Rep." ECF No. 2, p. 9. However, the Ninth Circuit
 10 has "consistently held that Title VII does not provide a cause of action for damages against
 11 supervisors or fellow employees" who do not meet the statutory definition of "employer." *Holly D.*
 12 *v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1179 (9th Cir. 2003); *Miller v. Maxwell's Intern. Inc.*, 991
 13 F.2d 583 (9th Cir. 1993) (holding individual defendants cannot be liable for damages under Title
 14 VII and ADEA).

15 Further, NRS 613.331(2) defines an "employer" as "any person who has 15 or more
 16 employees for each working day in each of 20 or more calendar weeks in the current or preceding
 17 calendar year." Plaintiff's Complaint does not allege that Defendant Andrews is or was an
 18 employer as defined by NRS 613. Moreover, Defendant Andrews was not, in fact, Plaintiff's
 19 employer. **Exhibit 2** at ¶ 9. As Nevada's anti-discrimination/anti-retaliation statute, NRS 613.310
 20 *et. seq.*, is virtually identical to Title VII and Nevada courts routinely analyze NRS 613.310 *et. seq.*
 21 claims pursuant to Title VII, Plaintiff's discrimination and retaliation claims asserting violation of
 22 NRS 613.330 must also be dismissed. *See Hirschhorn v. Sizzler Rests. Int'l Inc.*, 913 F. Supp. 1393,
 23 1399 (9th Cir. 1995) (citations omitted); *Tulipat v. Lombardo*, No. 2:22-cv-01738-JAD-VCF, 2022
 24 U.S. Dist. LEXIS 59657, *4 (D. Nev. Mar. 31, 2022) (concluding Nevada Supreme Court would
 25 hold that NRS 613.330 does not extend liability to individual employees).

26 Accordingly, Plaintiff has failed to state any plausible claim against Defendant Andrews for
 27 which relief may be granted as there is no individual liability under Title VII, the ADA, ADEA,
 28

1 and NRS 613. As a matter of law, Plaintiff's discrimination and retaliation claims must be dismissed
2 with prejudice.

3 **IV. CONCLUSION**

4 For the reasons discussed herein, Defendant Andrews respectfully requests that the Court
5 grant this Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(5) and 12(b)(6), dismissing this case
6 with prejudice.

7 Dated this 2nd day of August, 2023.

8 JACKSON LEWIS P.C.

9 */s/ Deverie J. Christensen*
10 DEVERIE J. CHRISTENSEN, ESQ.
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14 *Attorneys for Defendant Taylor Andrews*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 2nd day of August, 2023, I caused a true and correct copy of the foregoing **DEFENDANT TAYLOR ANDREWS' RULE 12(b)(5) AND RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF'S COMPLAINT** to be served via email and U.S. Mail to the following:

HIRAM GLENN, JR.
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hiramglennjr@yahoo.com

Pro Se Plaintiff

/s/ Kelley Chandler
Employee of Jackson Lewis P.C.